

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**BROIDY CAPITAL MANAGEMENT
LLC, et al.**

Civil Action No. 1:19-cv-00150-DLF

Plaintiffs,

v.

NICOLAS D. MUZIN, et al.

Defendants.

PLAINTIFFS' RESPONSE TO
DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Both *DNC v. Russian Federation*, 18-cv-03501, (SDNY) (“*DNC*”) and this suit allege state-sponsored hacking; the similarities end there. In *DNC*, “[a]t most, the DNC has alleged that after the Russian Federation stole the DNC’s documents, [Russian agents] told campaign members about the stolen documents . . . WikiLeaks requested the stolen documents and published them, and some of the other defendants welcomed the publication of the documents at times helpful to the Campaign.” *DNC* at 39-40. The *DNC* complaint did not allege that other defendants agreed to participate in the theft or even had advance knowledge of the hack. *DNC* at 38.

Defendants here, by contrast, were Qatar’s *agents* (as they concede), with complementary roles in the scheme from its inception. *See, e.g.*, Dkt. #40-1 at 19-25 (relying on agency to assert

“derivative sovereign immunity”). Defendants joined Qatar’s scheme at the outset, identifying Broidy to Qatar as a target, then curating stolen emails into packets for maximum impact.¹

These differences have legal consequences. The First Amendment does not immunize people who plan a hack, then organize portions of the stolen material for publication. As in *Quigley v. Rosenthal*, 327 F.3d 1044, 1067 (10th Cir. 2003), *Bartnicki* does not protect publication of private conversations by persons aware of the illegal behavior as it occurred. See *DNC* at 43.² Defendants would immunize all hack participants but the technician who clicked the mouse.

The contrasting factual contexts also render inapposite *DNC*’s “additional reasons” for dismissing RICO and other claims:

<i>DNC</i>	<i>Broidy</i>
Insufficiently asserted association-in-fact under RICO, pleading only “scattered contacts between the alleged AIF.” <i>DNC</i> at 53.	Long-standing association-in-fact, including well-paid agents, coordinating complementary activities. Dkt. #43 at 13-15.
Failed to allege common goal. <i>Id.</i> at 54-55.	Common goal of silencing criticism of Qatar. <i>Id.</i>
Failed to allege defendants managed or operated enterprise; Russia stole the documents without telling other “conspirators.” <i>Id.</i> at 57-58.	Defendants identify target, develop purpose of hack, curate materials to create adverse publicity. <i>Id.</i> at 12-25.
Did not allege stolen documents contained trade secrets and only two defendants even possessed or published them. <i>Id.</i> at 61.	Identifies trade secrets and each defendant’s role in misappropriation and dissemination. <i>Id.</i> at 44.
No pattern of racketeering; scheme lasted only nine months with no threat of reoccurring. <i>Id.</i> at 66-67.	Ongoing criminal enterprise that began in 2014, targeted more than 1,400 individuals, and continues today. <i>Id.</i> at 72-77.

¹ See Dkt. #43 at 13-17, 132-34 (detailing Defendants’ involvement in Qatar’s criminal enterprise before the hacking); Dkt. #18-2, ¶ 34 (discussing Defendants’ role in curation and distribution of stolen documents).

² *Bartnicki* also does not apply where, as here, the disseminator passes on only curated portions of the stolen materials. *Quigley* at 1067. Regardless, SDNY erred ruling that parties who are not members of the press are entitled to *Bartnicki*’s First Amendment shield.

<i>DNC</i>	<i>Broidy</i>
Failed to allege stolen documents were trade secrets that derived value from secrecy. <i>Id.</i> at 74.	Plaintiffs' business plans, proposals, costs, service projections, and important contacts qualify as trade secrets whose secrecy was carefully protected. <i>Id.</i> at 49-51.
Failed to allege stolen documents were used prior to becoming public. <i>Id.</i>	Defendants acquired, curated, and disseminated Plaintiffs' trade secrets before publication. <i>Id.</i> at 17-23, 86.

Finally, the dismissal of DNC's Virginia state-law claims has no relevance to the California state-law claims at issue here. Accordingly, *DNC* is nonbinding and inapposite.

Dated: August 13, 2019

Respectfully submitted,

/s/ Filiberto Agusti

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2019, I electronically filed the foregoing by using the Court's CM/ECF system to all counsel and parties receiving electronic notice of pleadings filed in this case.

/s/ Filiberto Agusti

Filiberto Agusti